

**BOISE, WEDNESDAY, JUNE 13, 2012 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**MICKELSEN CONSTRUCTION, INC.,**

**Plaintiff-Appellant,**

**V.**

**LESA DARLENE HORROCKS and  
SUNSHINE SECRETARIAL SERVICES,  
INC.,**

### Defendants-Respondents.

**Docket No. 38634**

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Stephen S. Dunn, District Judge.

Cooper & Larsen, Pocatello, for appellant.

May, Rammell & Thompson, Pocatello, for respondents.

This is an appeal from the district court's judgment dismissing Mickelsen Construction, Inc.'s contract action, which the court determined was barred by the statute of frauds, which requires certain agreements to be in writing. Mickelsen alleged that Lesa Horrocks and her business, Sunshine Secretarial Services, Inc., guaranteed a \$34,980 obligation of Accelerated Paving, Inc. Mickelsen contended that Horrocks wrote a \$34,980 check for the guarantee. Accelerated failed to pay Mickelsen; and Mickelsen was unable to cash Horrocks' check because of insufficient funds. Mickelsen filed this action to recover from Horrocks. The district court dismissed, holding that the alleged guarantee was within the statute of frauds, and the check, which was the only written evidence of the agreement, was insufficient to satisfy the statute. Mickelsen appealed.

**BOISE, WEDNESDAY, JUNE 13, 2012 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**CHARLES MALCOM CLAIR, JR.,**

## Plaintiff-Respondent,

**V.**

**TRACY JO CLAIR,**

**Defendant-Appellant.**

**Docket No. 39188**

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Rudolph Enrico Carnaroli, Magistrate Judge.

Nick L. Nielson, Pocatello, for appellant.

Belzer Law Office, Pocatello, for respondent.

Myers Law Office, PLLC, Pocatello, for respondent.

Appellant Tracy Jo Clair appeals the magistrate court's decision regarding the custody of her and Respondent Charles Malcolm Clair, Jr.'s child. Appellant wished to relocate to Reno, Nevada for a new job following the separation of the parties. Immediately following the parties' separation, Appellant had moved from Idaho to Ely, Nevada to live with her parents.

In the divorce action, the magistrate court ordered that the best interest of the child compelled that the child's primary residence should be in Pocatello, Idaho, where the father resided. Upon that finding the magistrate court devised a schedule that included three alternative plans depending on whether and/or when Appellant would relocate to the Pocatello area. Appellant challenges the magistrate court's order, arguing that the magistrate court had abused its discretion by creating a custody plan that harmed the child's bond with the mother; infringed upon the mother's rights to choose where to live, work, and raise her child; and punished the mother for not returning to Idaho. Appellant also challenges on appeal the magistrate court's decision to preclude the opinions regarding custody split recommendations of Dr. Linwood Vereen pursuant to Rule 702 of the Idaho Rules of Evidence.

**BOISE, WEDNESDAY, JUNE 13, 2012, AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**IN THE MATTER OF DISTRIBUTION OF )  
WATER TO VARIOUS WATER RIGHTS )  
HELD BY OR FOR THE BENEFIT OF A&B )  
IRRIGATION DISTRICT, AMERICAN )  
FALLS RESERVOIR DISTRICT #2, )  
BURLEY IRRIGATION DISTRICT, )  
MILNER IRRIGATION DISTRICT, )  
MINIDOKA IRRIGATION DISTRICT, )  
NORTH SIDE CANAL COMPANY, AND )  
TWIN FALLS CANAL COMPANY. )**

**Docket No. 38191/38192/38193**

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A&B IRRIGATION, AMERICAN FALLS )  
RESERVOIR DISTRICT #2, BURLEY )  
IRRIGATION DISTRICT, MILNER )  
IRRIGATION DISTRICT, MINIDOKA )  
IRRIGATION DISTRICT, NORTH SIDE )  
CANAL COMPANY, TWIN FALLS CANAL )  
COMPANY )**

**Petitioners-Appellants, )**

**and )**

**UNITED STATES OF AMERICA, BUREAU )  
OF RECLAMATION, )**

**Petitioners-Respondents on Appeal, )**

**v. )**

**GARY SPACKMAN, in his capacity as )  
Interim Director of the Idaho Department of )  
Water Resources, and the IDAHO )  
DEPARTMENT OF WATER RESOURCES, )**

**Respondents-Respondents on Appeal, )**

**and )**

**IDAHO GROUND WATER )  
APPROPRIATORS, INC., )**

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<b>Intervenor-Respondent-Cross</b>	)
<b>Appellant,</b>	)
	)
<b>and</b>	)
	)
<b>THE CITY OF POCATELLO,</b>	)
	)
<b>Intervenor-Respondent, Cross</b>	)
<b>Appellant.</b>	)

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Appeal from the District Court of the Fifth Judicial District, State of Idaho,  
Gooding County, Hon. John M. Melanson, District Judge.

Barker Rosholt & Simpson, LLP, Twin Falls, Capitol Law Group, PLLC,  
Gooding and Fletcher Law Office, Burley, for appellants.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondents.

Racine, Olson, Nye, Budge & Bailey, Chtd., Pocatello, for respondent-cross-  
appellant Idaho Ground Water Users.

Arthur Dean Tranmer, Pocatello and White & Jankowski, Denver, Colorado, for  
respondent-cross-appellant City of Pocatello.

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This case involves a dispute between several irrigation entities that each hold surface water rights (Surface Water Coalition or Coalition) with priority dates that precede those of several entities that each hold groundwater rights (Groundwater Users). In 2005, the Coalition asserted that pumping by the Groundwater Users was affecting the Coalition's interests and thereby causing the Coalition material injury. The Coalition initiated a delivery call with the Idaho Department of Water Resources (Department), in response to which the Department entered a series of orders that established a methodology for determining material injury that attempted to predict the minimum amount of water supply necessary to meet the Coalition's reasonable irrigation and storage water needs. Based upon that minimum full supply, the Department's orders provided either the Groundwater Users' use would be curtailed or the Groundwater Users could mitigate the Coalition's material injury by establishing and complying with replacement water plans.

After agency proceedings at the Department, the matter went before a district court for judicial review. The court affirmed in part and reversed in part the actions of the Department. The Coalition appeals to this Court, asserting that the minimum full supply methodology is unconstitutional because it does not adhere to the presumption that a senior water right holder puts its interest to beneficial use, and further, does not place the burden of proving non-beneficial use upon the holder of the junior interest. The Coalition also asks this

Court to remand to the Department with instructions to issue a single final order that fully responds to each of the matters disputed. The Groundwater Users and the City of Pocatello assert on cross-appeal that preponderance of the evidence, rather than clear and convincing, is the proper evidentiary standard for determining material injury.